

1 Luke Busby, Esq.
2 Nevada State Bar No. 10319
3 216 East Liberty St.
4 Reno, NV 89501
5 775-453-0112
6 luke@lukeandrewbusbyltd.com

7 Jesse Kalter, Esq.
8 780 Vista Blvd
9 Sparks, NV 89434
10 775-331-3888
11 jesse@jessekalterlaw.com

12 *Attorneys for the Plaintiff*

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 ZACKERY TYLER SPENCE,

16 Plaintiff,

17 vs.

18 Case No.: 3:17-cv-632

19 CARSON CITY DEPUTY SHERIFF
20 BRETT BINDLEY and CARSON CITY
21 SHERIFF'S SARGEANT JOHN HITCH

22 JURY TRIAL DEMANDED

23 Defendant(s),

24 /

25 **COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF FOR EXCESSIVE
26 FORCE BY POLICE OFFICER**

27 **Introduction**

28 1. This action is brought by Plaintiff ZACKERY TYLER SPENCE ("Plaintiff" or
29 "Spence"), by and through the undersigned counsel, to secure redress for Defendants CARSON
30 CITY DEPUTY SHERIFF BRETT BINDLEY ("Deputy Bindley") and CARSON CITY
31 SHERIFF'S SARGEANT JOHN HITCH ("Sergeant Hitch") violation of the Plaintiff's civil right
32 to be free from excessive force, assault and battery, and violation of Spence's Due Process rights

1 under the 14th Amendment to the United States Constitution.

2 **Jurisdiction and Venue**

3 2. This Court has jurisdiction of this action pursuant to 28 U.S.C. Sections 1331, 1343,
4 2201; 42 U.S.C. Sections 1983 and 1988.

5 3. Venue in this action is appropriate in the District of Nevada pursuant to 28 U.S.C.
6 Section 1391(b), and the transaction or occurrence before the Court occurred in this District.

7 **Parties**

8 4. Plaintiff is a resident of Carson City, Nevada.

9 5. Deputy Bindley is and at all relevant times was a Carson City Deputy Sheriff acting
10 under color of law.

11 6. Sergeant Hitch is and at all relevant times was a Carson City Sheriff's Office Sergeant
12 acting under color of law.

13 7. Plaintiff alleges that the Defendant Deputy Bindley and Sergeant Hitch performed,
14 participated in, aided and/or abetted in some manner the acts averred herein, proximately causing
15 the damages averred below and is liable for the damages and other relief sought herein.

16 **Allegations of Fact**

17 8. On March 20, 2016 at approximately 1:30 a.m., the Plaintiff and his brother Austin
18 Cortez ("Cortez"), were walking from a friend's house in Carson City, Nevada. Spence and Cotez
19 were on route to Wal-Mart to meet Spence's girlfriend Kimberly Cortez, who was going to drive
20 Spence and Cortez the rest of the way home. Spence and Cortez had decided to walk that
21 evening rather than drive because they did not believe it would have been safe to drive after
22 drinking. As Spence and Cortez were stopped at the northeast corner of Roop St. and Hot
23 Springs Road waiting for the signal to change such that they could cross the street, they were
24 stopped by Deputy Bindley.

25 9. According to a report created by Deputy Bindley about the incident attached hereto as
26 Exhibit 1, Bindley stopped Spence and Cortez because Bindley was trying to locate a stolen
27 vehicle that was spotted in the area, Spence and Cortez were wearing dark clothing, and Spence
28 and Cortez appeared to be in some sort of physical altercation. However, Spence and Cortez

1 were clearly on foot - there was no reasonable indication that Spence and Cortez had anything to
2 do with any stolen vehicle nor that any criminal activity was afoot.

3 10. As Deputy Bindley approached Spence and Cortez, Spence began filming the incident
4 on his iPhone. This video is attached hereto as Exhibit 2. The video in Exhibit 2 shows Deputy
5 Bindley exiting his patrol vehicle and shining his flashlight at Spence and Cortez. Spence can be
6 heard asking Deputy Bindley, "how's it going"? Deputy Bindley responds, "what are you guys
7 doing"? Spence then responds, "Going home." Bindley then asks, "How old are you guys"?
8 Spence then responds, "20, 24." Bindley then states, "Take your hands out of your pockets for
9 me" and then states "Got any I.D. with you?" Spence can then be heard stating to Cortez, "Give
10 him that left pocket wallet." The video in Exhibit 2 then terminates because at that time Spence
11 received a call from his girlfriend Kimberly Cruz on the iPhone on which he was recording the
12 video.

13 11. After the call with Ms. Cruz terminated, the iPhone began recording again. This video
14 is attached hereto as Exhibit 3. The video in Exhibit 3 shows Deputy Bindley walking towards
15 Spence. Spence can be heard saying, "for what? Deputy Bindley then states "What"? To which,
16 Spence again responds, "For what"? Deputy Bindley can then be seen walking towards Spence
17 and then delivering what can best be described as a "sucker punch" to Spence's face. The video
18 then vaguely shows a scuffle ensuing and Deputy Bindley can then be heard yelling at Spence to
19 get down on the ground.

20 12. Deputy Bindley's own report in Exhibit 1 states that before punching Spence in the
21 face, that Spence, "removed his hands from his pocket and balled his fists." However, this cannot
22 be the case for at least one of Spence's hands because Spence had his phone in his hand which
23 was recording the incident. This, among many of the facts relayed in Deputy Bindley's report, is
24 simply a fabrication designed to untruthfully paint Spence as the aggressor in the incident.

25 13. Deputy Bindley also stated in his report in Exhibit 1 that Austin was walking behind
26 him before he punched Spence: "Austin was now behind me and out of my sight. I believed I was
27 going to be attacked by one or both of the people I was talking to." The video in Exhibit 3 flatly
28 contradicts this by showing that Austin walked in front of Deputy Bindley seconds before Deputy

1 Bindley sucker punched Spence in the face.

2 14. Bindley states in his report that after the initial punch, he punched Spence in the face
3 and chest two or three more times and that he struck Spence with his knee once or twice. Mr.
4 Cortez witnessed his brother suffer this unprovoked beating at the hands of Deputy Bindley.

5 15. Deputy Bindley then states in his report that Spence refused medical attention, a claim
6 which Spence Disputes.

7 16. Deputy Bindley's report in Exhibit 1 indicates that Spence stated, "I have to take care
8 of this pig in front of me" while he was on the phone just before Deputy Bindley punched Spence
9 - however, both Ms. Cruz and Mr. Cortez, as well as Mr. Spence deny that Spence said this during
10 the conversation. Ms. Cruz's account of the conversation is in the affidavit attached hereto as
11 Exhibit 4.

12 17. Deputy Bindley lists himself as the "victim" in his report in Exhibit 1, stating that the
13 means of attack (presumably by Spence) were "Hands, fist, feet." However, the video in Exhibit
14 3 shows that it was undeniably Deputy Bindley and not Spence who was the attacker. There is no
15 evidence that Spence attacked Bindley.

16 18. Deputy Bindley's report in Exhibit 1 then states that he cuffed Spence and held
17 Cortez at gunpoint until backup arrived.

18 19. Shortly after the encounter, Sergeant Hitch arrived on the scene, and Spence was
19 placed into a patrol vehicle. Sergeant Hitch's report in Exhibit 5 indicates that he interviewed
20 Spence and that Spence essentially confessed to trying to attack Deputy Bindley:

21
22 I spoke to the male who Deputy Bindley struck in the face and he denied
23 medical attention. When asked why my Deputy punched him in the face
24 he stated that he was being verbally disrespectful to the Deputy. I asked
if he became aggressive or threatened Deputy Bindley and he stated that
he did come at him aggressively trying to fight him.

25 20. Before interviewing Spence, Sergeant Hitch did not read Spence his Miranda Warning.
26 Although Sergeant Hitch claimed at Spence's preliminary hearing that he was conducting a use of
27 force investigation on Deputy Bindley when he interviewed Spence, Spence does not believe that
28 Sergeant Hitch created any such report resulting from this investigation of Deputy Bindley.

1 Rather, Spence alleges that Sergeant Hitch interviewed Spence for the specific purpose to
2 fabricate evidence, to exonerate Deputy Bindley from culpability for his assault on Spence, and to
3 frame Spence for attacking Deputy Bindley.

4 21. Even though the conversation described in Hitch's report in Exhibit 5 took place in a
5 Carson City patrol vehicle, Hitch did not record this conversation even though he had the means
6 to do so. Spence categorically denies making the statements ascribed to him in Hitch's report
7 cited above and hereby alleges that these statements by Sergeant Hitch are fabrications designed
8 to provide cover for Deputy Bindley's violent and unlawful assault of Spence shown in Exhibit 3.
9 Mr. Cortez also denies that Spence ever made any statement like this after the event, even though
10 Cortez was with Spence during the entire incident and after the arrest took place.

11 22. Subsequent to the events described above, the Plaintiff was arrested and was booked
12 at the Carson City Jail on charges of Assault on a Peace Officer, Obstructing a Peace Officer with
13 Violence, and Intoxicated Pedestrian. The Carson City District Attorney's Office filed a criminal
14 complaint against Spence on March 23, 2016 charging Spence with Assault on a Peace Officer
15 (See Exhibit 6) Spence plead no contest to a charge of intoxicated pedestrian, under which
16 sentencing was deferred for six months and then the plea withdrawn, and the charge dismissed.
17 All of the charges against Spence have been dismissed with prejudice and the state is precluded
18 from bringing further charges related to the incident. (See Exhibit 7).

19 23. Deputy Bindley intentionally and/or recklessly provoked a violent and brutal assault
20 and battery of the Plaintiff without provocation or need.

21 24. Deputy Bindley and Hitch both created reports that contain false evidence in the form
22 of fabrications intended to frame Mr. Spence for the crimes of Assault on a Peace Officer,
23 Obstructing a Peace Officer with Violence.

24 25. The conduct by Officer Bindley constituted unreasonable and excessive use of force
25 and an unlawful exercise in police authority.

26 26. As a result of the above-described acts, the Plaintiff was deprived of clearly established
27 rights and immunities secured to him under the Constitution and the laws of the United States
28 including, but not limited to his right under the 4th Amendment to be free from excessive and

1 unreasonable force at the hands of government officials acting under color of law and his 14th
2 Amendment Due Process right to not be subjected to criminal charges on the basis of false
3 evidence.

4 **First Cause of Action**

5 **(Fourth and Fourteenth Amendments, Excessive Force – 42 U.S.C. Section 1983)**

6 **(Against Deputy Bindley)**

7 27. Plaintiff repeats and realleges the allegations set forth in the foregoing Paragraphs as
8 though fully set forth herein.

9 28. The use of force by Deputy Bindley against the Plaintiff was excessive, unlawful, and
10 unreasonable, causing injury and physical pain and suffering to the Plaintiff.

11 29. By the actions described above, Deputy Bindley deprived Plaintiff of the following
12 clearly established and well-settled constitutional rights:

13 a. Freedom from the use of excessive and unreasonable force;
14 b. Freedom from the deprivation of liberty without due process of law;
15 c. Freedom from summary punishment.

16 30. Deputy Bindley subjected Plaintiff to these deprivations of his rights either
17 maliciously, or by acting with a reckless disregard for whether Plaintiff's rights would be violated
18 by their actions.

19 31. As a direct and proximate result of the described unlawful and malicious conduct by
20 Deputy Bindley, committed under color of law and under authority as a Carson City Deputy
21 Sheriff, the Plaintiff suffered injury, severe physical pain and suffering and emotional distress. As
22 a result, he was deprived of his right to be secure in her person against violations of his rights
23 under the Fourth Amendment of the United States Constitution.

24 32. The acts of Deputy Bindley were intentional, wanton, malicious and oppressive and
25 made with reckless indifference to plaintiff's rights thus entitling Plaintiff to an award of punitive
26 damages.

27 ///

28 ///

Second Cause of Action (Assault and Battery) Against Deputy Bindley

33. Plaintiff repeats and realleges the allegations set forth in the foregoing Paragraphs as though fully set forth herein.

34. Deputy Bindley punched and kicked the Plaintiff against his will and without his permission.

35. The actions of Deputy Bindley caused physical injury to the Plaintiff.

36. As a direct and proximate result of the above described unlawful and malicious conduct by Deputy Bindley, committed under color of law, Plaintiff suffered injury, pain and suffering, and emotional distress.

37. The acts of Deputy Bindley as described above were intentional, wanton, malicious and oppressive and made with reckless indifference to Plaintiff's rights thus entitling Plaintiff to an award of punitive damages.

Violation of Due Process Under the 14th Amendment for the Deliberate Fabrication of Evidence

42 U.S.C. 1983

(Against Bindley and Hitch)

38. Plaintiff repeats and realleges the allegations set forth in the foregoing Paragraphs as though fully set forth herein.

39. Deputy Bindley and Sergeant Hitch deliberately fabricated evidence that was used to criminally charge and prosecute Spence. *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir.2001).

40. As a result of the acts as described above, Bindley and Hitch deprived Spence of his right to due process, in violation of the Fourteenth Amendment to the Constitution of the United States, causing damages to Spence.

41. As a direct and proximate result of the Plaintiff's arrest, the Plaintiffs suffered and continues to suffer severe mental anguish and emotional trauma in connection with the deprivation of the constitutional right guaranteed by the Fourteenth Amendment of the

Constitution.

42. The acts of Bindley and Hitch described above were dishonest, intentional, wanton, malicious, and oppressive, thus entitling Plaintiff to an award of punitive damages.

43. In addition to the relief requested above, the Plaintiff requests relief as described in the prayer for relief below.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against the Defendants as follows:

1. For a declaratory and injunctive relief that the policies, practices, and acts complained of herein are illegal and unconstitutional;
2. For actual and compensatory damages, in an amount to be determined at trial;
3. For exemplary and punitive damages, in an amount to be determined at trial;
4. For attorney fees and costs incurred herein per 42 U.S.C. 1988;
5. For nominal damages; and
6. For such other and further relief as this Court may deem appropriate.

Respectfully submitted this Tuesday, October 17, 2017.

By: Luke A. Busby
Luke Busby, Esq.
Nevada State Bar No. 10319
216 East Liberty St.
Reno, NV 89501
775-453-0112
luke@lukeandrewbusbyltd.com

Jesse Kalter, Esq.
780 Vista Blvd
Sparks, NV 89434
775-331-3888
jesse@jessekalterlaw.com

Exhibit List

1. Bindley Report
2. Video 1 of Incident (To Be Manually Filed)
3. Video 2 of Incident (To Be Manually Filed)
4. Affidavit of Kimberly Cruz
5. Hitch Report
6. Criminal Complaint against Spence
7. Dismissal of Spence Criminal Case